

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KENNETH P. EVANS, an individual,

Plaintiff,

v.

SHELLPOINT MORTGAGE SERVICES
aka NEWREZ, LLC, a Delaware
corporation; MTC FINANCIAL, dba
TRUSTEE CORPS, a California
Corporation; and THE BANK OF NEW
YORK MELLON fka THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS CWABS, INC.,
ASSET-BACKED CERTIFICATES.
SERIES 2006-21,

Defendants.

No.: 2:19-cv-00288-TOR

DEFENDANT TRUSTEE CORPS'
ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant MTC Financial, Inc., dba Trustee Corps ("Trustee Corps"), by and through its attorney of record, Michael S. DeLeo of Peterson Russell Kelly PLLC, and submits its Answer to Plaintiff's Verified Complaint for Injunctive & Declaratory Relief, to Quiet Title, and for Damages ("Complaint").

INTRODUCTION

1. Paragraph 1 consists of a legal argument and conclusion to which no answer is required. To the extent the paragraph includes factual averments, Trustee Corps denies them.

JURISDICTION AND VENUE

2. Answering paragraphs 2 through 4 of the Complaint, Trustee Corps admits that

1 this Federal District Court has subject matter jurisdiction over this action, and that venue is
2 proper in this Court. Trustee Corps further admits that a substantial part of the events giving rise
3 to Plaintiff's claims occurred in Chelan County, and that the real property at issue here is situated
4 in Chelan County. To the extent these paragraphs include other factual averments, Trustee Corps
5 is without knowledge or information sufficient to form a belief as to their accuracy, and therefore
6 denies them.

7 **PLAINTIFF**

8 3. Answering paragraph 5 of the Complaint, Trustee Corps is without knowledge or
9 information sufficient to form a belief as to Plaintiff's current residence, and accordingly denies
10 the same.

11 **DEFENDANTS**

12 4. Answering paragraph 6 of the Complaint, Trustee Corps is without knowledge or
13 information sufficient to form a belief as to its accuracy, and therefore denies the allegations
14 contained in this paragraph.

15 5. Answering paragraph 7 of the Complaint, Trustee Corps denies that MTC
16 Financial Inc., is a California corporation. Trustee Corps admits that it conducts business in
17 Chelan County, Washington.

18 6. Answering paragraph 8 of the Complaint, Trustee Corps is without knowledge or
19 information sufficient to form a belief as to its accuracy, and therefore denies the allegations
20 contained in this paragraph.

21 **FACTS**

22 7. Answering paragraph 9 of the Complaint, Trustee Corps admits that its records
23 indicate that Plaintiff owns the identified property but it is without knowledge or information
24 sufficient to form a belief as to Plaintiff's current residence, and accordingly denies the
25 allegation.

26 8. Answering paragraph 10 of the Complaint, Trustee Corps admits that the
27 paragraph accurately states the legal description of the property at issue in this lawsuit ("the

Property”).

9. Answering paragraph 11 of the Complaint, Trustee Corps admits that based on the records available to it Plaintiff is the fee owner of the Property. Trustee Corps is without knowledge or information sufficient to form a belief as to its accuracy as to any remaining allegation, and accordingly denies.

10. Answering paragraph 12 of the Complaint, Trustee Corps states that the Deed of Trust recorded in Chelan County under No. 2245746 speaks for itself (the “Deed of Trust”). Trustee Corps denies any of Plaintiff’s allegations that are inconsistent with the Deed of Trust.

11. Answering paragraph 13 of the Complaint, Trustee Corps is without knowledge or information sufficient to form a belief as to its accuracy, and accordingly denies the allegations contained in this paragraph.

12. Answering paragraph 14 of the Complaint, Trustee Corps states that the copy of the Notice of Trustee Sale (the “2010 Notice”) attached as Exhibit A to the Complaint does not appear to be complete. Accordingly, Trustee Corps denies the allegations contained in this paragraph.

13. Answering paragraph 15 of the Complaint, Trustee Corps states that the referenced language is not included in the 2010 Notice attached to the Complaint and it therefore denies the allegation.

14. Paragraph 16 of the Complaint consists of a legal conclusion to which no answer is required. To the extent the paragraph may require an answer, the allegation is denied.

15. Answering paragraph 17 of the Complaint, Trustee Corps admits that, absent cancelation, continuance, or other factors, the incomplete copy of the 2010 Notice attached to the Complaint as Exhibit A appears to set a foreclosure sale date of September 3, 2010.

16. Answering paragraph 18 of the Complaint, Trustee Corps is without knowledge or information sufficient to form a belief as to its accuracy, and accordingly denies the allegations contained in this paragraph.

17. Answering paragraph 19 of the Complaint, Trustee Corps states that the copy of

1 the Notice of Trustee Sale (the “2011 Notice”) attached as Exhibit B to the Complaint does not
2 appear to be complete. Accordingly, Trustee Corps denies the allegations contained in this
3 paragraph.

4 18. Answering paragraph 20 of the Complaint, Trustee Corps again states that the
5 2011 Notice is incomplete and by way of further answer states that it is without knowledge or
6 information sufficient to form a belief as to its accuracy, and accordingly denies the allegations
7 contained in this paragraph.

8 19. Paragraph 21 of the Complaint assumes facts not in evidence, and further consists
9 of a legal conclusion to which no answer is required. To the extent the paragraph may be
10 deemed to include allegations requiring a response, Trustee Corps denies them.

11 20. Answering paragraph 22 of the Complaint, Trustee Corps admits that, absent
12 cancelation, continuance, or other factors, the incomplete copy of the 2011 Notice attached to the
13 Complaint as Exhibit B appears to set a foreclosure sale date of May 6, 2011.

14 21. Answering paragraph 23 of the Complaint, Trustee Corps states that the allegation
15 is not a factual allegation to which a response should be required. To the extent a response may
16 be required to this paragraph, Trustee Corps is without knowledge or information sufficient to
17 form a belief as to its accuracy, and accordingly denies the allegations contained in this
18 paragraph.

19 22. Answering paragraph 24 of the Complaint, Trustee Corps is without knowledge or
20 information sufficient to form a belief as to its accuracy, and accordingly denies the allegations
21 contained in this paragraph.

22 23. Answering paragraph 25 of the Complaint, Trustee Corps is without knowledge or
23 information sufficient to form a belief as to its accuracy, and accordingly denies the allegations
24 contained in this paragraph.

25 24. Answering paragraph 26 of the Complaint, Trustee Corps is without knowledge or
26 information sufficient to form a belief as to its accuracy, and accordingly denies the allegations
27 contained in this paragraph.

1 25. Answering paragraph 27 of the Complaint, Trustee Corps admits that Plaintiff has
2 attached what appears to be a true and correct copy of a Notice of Discontinuance of Trustee Sale
3 (“Notice of Discontinuance”) as Exhibit C to his Complaint. The Notice of Discontinuance
4 speaks for itself. Trustee Corps denies any allegations in this paragraph inconsistent with the
5 Notice of Discontinuance.

6 26. Paragraph 28 of the Complaint consists of a legal conclusion to which no answer
7 is required. To the extent the paragraph may be deemed to contain factual allegations, Trustee
8 Corps denies them.

9 27. Paragraph 29 of the Complaint consists of a legal conclusion to which no answer
10 is required. To the extent the paragraph may be deemed to require an answer, Trustee Corps
11 admits that Plaintiff has attached what appears to be a true and correct copy of a Notice of Intent
12 to Accelerate and Foreclose (“Notice of Intent”) as Exhibit D to his Complaint. The Notice of
13 Intent speaks for itself. Trustee Corps denies any allegations in this paragraph inconsistent with
14 the Notice of Discontinuance and any further denies any remaining allegations not admitted.

15 28. Answering paragraph 30 of the Complaint, Trustee Corps is without knowledge or
16 information sufficient to form a belief as to its accuracy, and accordingly denies the allegations
17 contained in this paragraph.

18 29. Answering paragraph 31 of the Complaint, Trustee Corps is without knowledge or
19 information sufficient to form a belief as to its accuracy, and accordingly denies the allegations
20 contained in this paragraph. Trustee Corps further denies that any answer is required to the legal
21 conclusions stated in this paragraph.

22 30. Answering paragraph 32 of the Complaint, Trustee Corps admits that Plaintiff has
23 attached what appears to be a true and correct copy of a Notice of Trustee’s Sale (the “2019
24 Notice”) as Exhibit E to his Complaint. The 2019 Notice speaks for itself. Trustee Corps denies
25 any allegations in this paragraph inconsistent with the 2019 Notice. Trustee Corps further denies
26 that any answer is required to the legal conclusions stated in this paragraph.

27 31. Paragraph 33 of the Complaint consists of a legal conclusion to which no answer

1 is required. To the extent the paragraph may be deemed to contain factual allegations, Trustee
2 Corps denies them.

3 32. Paragraph 34 of the Complaint consists of a legal conclusion to which no answer
4 is required. To the extent the paragraph may be deemed to contain factual allegations, Trustee
5 Corps denies them.

6 33. Paragraph 35 of the Complaint consists of a legal conclusion to which no answer
7 is required. To the extent the paragraph may be deemed to contain factual allegations, Trustee
8 Corps denies them.

9 34. Answering paragraphs 36 and 37 of the Complaint, Trustee Corps admits that
10 Exhibit F appears to attach a copy of a letter from a former counsel for Plaintiff to Shellpoint
11 Mortgage Servicing, dated April 6, 2017. Trustee Corps is without knowledge or information
12 sufficient to form a belief as to the truth of the remaining allegations in these paragraphs, and
13 therefore denies them.

14 35. Answering paragraph 38 of the Complaint, Trustee Corps admits that Exhibit G
15 appears to attach a copy of a letter from a former counsel for Plaintiff to Shellpoint Mortgage
16 Servicing, dated May 18, 2017. Trustee Corps is without knowledge or information sufficient to
17 form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies
18 them.

19 36. Answering paragraph 39 of the Complaint, Trustee Corps is without knowledge or
20 information sufficient to form a belief as to the truth of the allegations in this paragraph, and
21 therefore denies them.

22 37. Trustee Corps denies all allegations to which a response is required and which
23 were not specifically admitted.

24 **FIRST CAUSE OF ACTION – INJUNCTIVE RELIEF**

25 38. Answering paragraph 40 of the Complaint, Trustee Corps re-alleges its answers as
26 given in the preceding paragraphs.

27 39. Paragraphs 41, 42, and 43 of the Complaint consists of legal conclusions and a

1 request for relief to which no answer is required. To the extent the paragraphs are deemed to
2 require a response, Trustee Corps denies the allegations and denies that Plaintiff is entitled to the
3 relief requested, or any relief.

4 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF**

5 40. Answering paragraph 44 of the Complaint, Trustee Corps re-alleges its answers as
6 given in the preceding paragraphs.

7 41. Answering paragraph 45 of the Complaint, Trustee Corps admits that Plaintiff is
8 an “interested person” under, or is otherwise a person whose rights, status, or other legal
9 relations are affected by, the documents listed in this paragraph.

10 42. Answering paragraphs 46 through 49 of the Complaint, they consist of requests
11 for relief. Trustee Corps denies that Plaintiff is entitled to the relief requested, or any relief.

12 43. Paragraph 50 of the Complaint consists of a legal conclusion to which no answer
13 is required. To the extent the paragraph is deemed to require an answer, Trustee Corps denies.

14 44. Answering Paragraph 51 of the Complaint, Trustee Corps denies the allegations
15 contained therein.

16 **THIRD CAUSE OF ACTION – VIOLATIONS OF THE FORECLOSURE FAIRNESS
17 ACT**

18 45. Answering paragraph 52 of the Complaint, Trustee Corps re-alleges its answers as
19 given in the preceding paragraphs.

20 46. Answering paragraph 53 of the Complaint, Trustee Corps notes that it apparently
21 mistakenly makes an allegation of wrongdoing by Plaintiff. If the paragraph is deemed to make
22 allegations about Trustee Corps, Trustee Corps denies those allegations.

23 47. Paragraphs 54, 55, and 56 of the Complaint consist of legal conclusions to which
24 no answer is required. To the extent an answer is required, Trustee Corps responds that RCW
25 61.24.040 speaks for itself, and by way of further answer Trustee Corps denies all allegations not
26 specifically admitted.

27 48. Answering paragraph 57 of the Complaint, Trustee Corps states that the

1 application of the statute of limitations and tolling issues related to this case are disputed
2 between the Plaintiff and co-defendant and, therefore, Trustee Corps is without sufficient
3 information and denies the allegations.

4 49. Answering paragraph 58 of the Complaint, Trustee Corps asserts that the
5 allegation is not, or should not be directed to it and, therefore, no response should be required.
6 To the extent a response is required, Trustee Corps denies the allegations contained therein.

7 50. Paragraph 59 of the Complaint states a claim for relief for which no response
8 should be required. To the extent a response is required, Trustee Corps denies that Plaintiff is
9 entitled to the relief requested.

10 **FOURTH CAUSE OF ACTION – CONSUMER PROTECTION ACT**

11 51. Answering paragraph 60 of the Complaint, Trustee Corps re-alleges its answers as
12 given in the preceding paragraphs.

13 52. Paragraph 61 of the Complaint sets forth conclusions of law to which no response
14 should be required. To the extent a response is required, Trustee Corps denies that it violated the
15 Washington's Consumer Protection Act and, therefore, to the extent the paragraph makes
16 allegations against Trustee Corps, Trustee Corps denies them.

17 53. Answering paragraph 62 of the Complaint, Trustee Corps asserts that the
18 allegation is not, or should not be directed to it and, therefore, no response should be required
19 from it. To the extent the paragraph can be deemed to make any factual allegations against
20 Trustee Corps, Trustee Corps denies them.

21 54. Paragraphs 63, 64, and 65 of the Complaint, set forth legal conclusions and
22 therefore no response should be required. Trustee Corps states that to the extent the paragraphs
23 make allegations about its co-defendants, Trustee Corps lacks information and knowledge
24 sufficient to form a belief as to the truth of those allegations, and therefore denies them.

25 55. Paragraph 66 does not contain any factual allegation concerning defendants, and
26 therefore no answer is required.
27

1 **FIFTH CAUSE OF ACTION – CIVIL CONSPIRACY**

2 56. Answering paragraph 67 of the Complaint, Trustee Corps re-alleges its answers as
3 given in the preceding paragraphs.

4 57. Paragraphs 68 and 69 of the Complaint state legal conclusions to which no answer
5 is required. To the extent the paragraphs can be deemed to make any factual allegations against
6 Trustee Corps, Trustee Corps denies those allegations.

7 **SIXTH CAUSE OF ACTION – QUIET TITLE**

8 58. Answering paragraph 70 of the Complaint, Trustee Corps re-alleges its answers as
9 given in the preceding paragraphs.

10 59. Answering paragraph 71 of the Complaint, Trustee Corps admits that, based on
11 the information available to it, Plaintiff is the fee owner of the Property. Trustee Corps lacks
12 information sufficient to form a belief as to the truth of the remaining allegations contained
13 therein, and therefore denies them.

14 60. Paragraph 72 of the Complaint states a claim for relief and is not or should not be
15 directed to Trustee Corps. To the extent the paragraph could be construed to require a response
16 form Trustee Corps, it denies that Plaintiff is entitled to the relief requested.

17 **PRAYER FOR RELIEF**

18 The remainder of the Plaintiff's Complaint consists of a prayer for relief. Trustee Corps
19 denies that Plaintiff is entitled to any relief against Trustee Corps. All paragraphs of the
20 Complaint not expressly admitted herein are hereby denied. Trustee Corps reserves the right to
21 amend its answer and affirmative defenses.

22 **TRUSTEE CORPS' ADDITIONAL ANSWER AND AFFIRMATIVE DEFENSES**

23 By way of further answer or as affirmative defenses against Plaintiff, Trustee Corps
24 alleges as follows:

25 1. Plaintiff's claims against Trustee Corps may be barred in whole or in part because
26 Plaintiff fails to state a claim upon which relief may be granted.

27 2. Plaintiff's claims against Trustee Corps may be barred in whole or in part under the

doctrines of waiver, laches, estoppel, and/or unclean hands.

3. Plaintiff's claims against Trustee Corps may be barred in whole or in part because Plaintiff has failed to suffer any damages proximately caused by Trustee Corps.

4. Plaintiff's alleged damages, if any, are the result of his own fault, or the fault of another, for which Trustee Corps has no liability.

5. Plaintiff's claims against Trustee Corps may be barred in whole or in part because Plaintiff failed to mitigate his damages, if any.

6. Plaintiff does not have a cognizable claim for damages against Trustee Corps because Trustee Corps has not breached any duty with regard to its role as trustee on the deed of trust for the real property at issue.

7. Plaintiff's claim is barred in whole or in part because Trustee Corp has not violated any aspect of Washington's Deed of Trust Act.

8. Trustee Corps reserves its rights to seek dismissal of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12, including 12(b)(6) and / or 12(c), and to join in any motion to dismiss or motion for summary judgment.

I. TRUSTEE CORPS' PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiff's Complaint and asserted affirmative defenses, Trustee Corps requests the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice, and that they take nothing thereby;

2. That Trustee Corps be awarded its attorney's fees and costs as allowed by law including Rule 11 of this Court; and

3. Such other relief as the Court deems just and equitable.

DATED: October 10, 2019.

PETERSON RUSSELL KELLY, PLLC

By: /s/ Michael S. DeLeo
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Attorneys for Defendant MTC Financial Inc.,
d/b/a Trustee Corps

CERTIFICATE OF SERVICE

I certify that I caused to be served in the manner noted below a copy of the foregoing pleading on the following individual(s):

Emanuel F. Jacobowitz	<input type="checkbox"/> Via Facsimile
Nathan J. Arnold	<input type="checkbox"/> Via First Class Mail
Cloutier Arnold Ortega PLLC	<input type="checkbox"/> Via Messenger
2701 First Avenue, Suite 200	<input type="checkbox"/> Via Email
Seattle, WA 98121	<input checked="" type="checkbox"/> Via CM/ECF Electronic Notice
Email: manny@caoteam.com;	
nathan@caoteam.com	

Joseph T. McCormick , III	<input type="checkbox"/> Via Facsimile
Joshua S. Schaer	<input type="checkbox"/> Via First Class Mail
Wright Finlay & Zak LLP - SEA	<input type="checkbox"/> Via Messenger
3600 15th Avenue West. Suite 202	<input type="checkbox"/> Via Email
Seattle, WA 98119	<input checked="" type="checkbox"/> Via CM/ECF Electronic Notice
Email: jmccormick@wrightlegal.net;	
jschear@wrightlegal.net	

DATED: October 10, 2019, at Bellevue, Washington.

By: /s/ Rachel White
Rachel White, Paralegal